

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :  
Steven A. Roye :  
Serial No.: 10/690,674 : Group Art Unit: 2427  
Filed: October 22, 2003 : Examiner: Ryan, Patrick A.  
  
Title: "METHOD AND APPARATUS FOR :  
DETERMINING POSITIVE AUDIENCE  
RESPONSE"

BRIEF ON APPEAL  
(REVISED IN RESPONSE TO NOTICE OF NON-COMPLIANT BRIEF  
DATED JANUARY 28, 2009)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

To whom it may concern:

The following revised appeal brief is submitted pursuant the appeal, the notice of appeal having been previously filed, from the action of the primary examiner dated October 27, 2008, in the above identified application, and revised in response to a notice of non compliant brief dated January 28, 2009. An authorization to charge a credit card was previously provided for the notice of appeal, and for filing the brief in support of appeal. According to the notice of non-compliant brief, the summary of claimed subject matter for independent claim 15 did not refer to specification by page and line number or paragraph number. This revised brief in the summary for claim 15, refers to specification by page and line number or paragraph number.

## **I. REAL PARTY IN INTEREST**

The real party in interest in this matter is the inventor(s) and applicant(s): Steven A. Roye, residing at 112 Mountain View Avenue, Santa Rosa, California 95407.

## **II. RELATED APPEALS AND INTERFERENCES**

There are no other current appeals and there are no current interferences related to this matter.

## **III. STATUS OF CLAIMS**

Claims 1-26 are pending in the application. Claims 1-26 have been rejected. The rejections of claims 1-26 of the office action of October 27, 2008 are being appealed. The final form of claims 1-26 is enclosed as an appendix to this appeal brief.

## **IV. STATUS OF AMENDMENTS**

No amendment was filed after the office action of October 27, 2008.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Claim 1 of the present application specifies:

1. A method comprising
  - recording a first length of time of a first positive audience response of one or more test subjects to a presentation; and
  - displaying a first numerical value for the first length of time on a computer monitor;
- and
- displaying a first alphanumeric heading on the computer monitor which indicates what the first numerical value refers to.

In at least one embodiment of the present application, a method is disclosed comprising

recording a first length of time of a first positive audience response of one or more test subjects to a presentation. (Present application, pg. 1, first paragraph). The method is also comprised of displaying a first numerical value for the first length of time on a computer monitor. (Present application, pg. 11, first paragraph; Fig. 3). The method also includes displaying a first alphanumeric heading on the computer monitor which indicates what the first numerical value refers to. (Id.)

Claims 2-14 are dependent on claim 1 on also have further limitations.

Claim 2 further specifies that the presentation is a performance. Claim 3 further specifies that the first positive audience response is audible.

Claim 4 of the present application specifies:

4. The method of claim 1 further comprising
  - recording a total length of time of the presentation;
  - displaying a second numerical value for the total length of time of the presentation on the computer monitor; and
  - displaying a second alphanumeric heading on the computer monitor, wherein the second alphanumeric heading indicates what the second numerical value refers to.

In at least one embodiment of the present invention, a total length of time of a presentation is recorded, such as in computer memory 22 and displayed, such as in fields 206a and 206b of a performance timer 206, on a menu 200 on a computer monitor, such as 20. (Present application, pg. 7, fourth paragraph, pg. 9, last paragraph, Fig. 1, Fig. 3) The total length of time of a presentation is displayed as a numerical value on a computer monitor, such as 20, under a heading which refers to "Performance Timer". (Id.)

Claim 5 of the present application specifies:

5. The method of claim 1 further comprising
  - determining an accumulated amount of time of positive audience response of one or more test subjects to a presentation;
  - determining a ratio of the accumulated amount of time of positive audience response divided by the length of total time of the presentation;

and displaying the ratio on a computer monitor.

In at least one embodiment of the present invention, an accumulated amount of positive audience response of one or more test subjects to a presentation is determined. (Present application, pg. 2, first paragraph). A ratio of accumulated amount of time of positive audience response divided by the length of total time of a presentation is determined and displayed on computer monitor 20 in field 210a under the PAR index. (Present application, pg. 2, first paragraph; pg. 12, second to last paragraph, Fig. 3).

Claim 6 further specifies that the ratio is displayed as a percentage of the total time of the presentation. Claim 7 further specifies that the first positive audience response is comprised of laughter of the one or more test subjects. Claim 8 further states that the accumulated amount of time of positive audience response is comprised of an accumulated amount of time of laughter of the one or more test subjects.

Claims 9 and 10 further specify determining and displaying on the computer monitor second and third numerical values, for an accumulated amount of time of positive audience response of one or more test subjects for first and second minutes, respectively, of the presentation. In at least one embodiment of the present invention, as shown in Fig. 3, fields 202a and 202b are used for displaying a positive audience response time in seconds for first and second minutes, respectively, of the presentation. (Present application, Fig. 3, pg. 9, last paragraph).

Claim 11 further specifies determining and displaying on the computer monitor a second numerical value for an average amount of time of positive audience response of one or more test subjects per minute of the presentation. In at least one embodiment of the present invention, a field 210b is provided for displaying the average positive audience response seconds per minute. (Present application, pg. 5, second to last paragraph, pg. 12, last paragraph, Fig. 3).

Claims 12 and 13 further specify determining and displaying on the computer monitor second and third numerical values for the total number of positive audience responses of the one or more test subjects in a first and second minute, respectively, of the presentation. In at least one embodiment of the present invention fields 204a and 204b are used for displaying a total number of positive audience responses for first and second minutes, respectively, of the presentation. (Present application, Fig. 3, pg. 5, last paragraph; pg. 11, last paragraph – pg. 12, first paragraph).

Claim 14 further specifies determining and displaying on the computer monitor a second numerical value for the average number of positive audience responses of the one or more test subjects per minute of the presentation. In at least one embodiment a field 210c is provided for displaying the average number of positive audience responses of the one or more test subjects per minute of the presentation. (Present application, pg. 6, first paragraph; pg. 13, first paragraph, Fig. 3).

Claim 15 of the present application specifies:

15. An apparatus comprising
  - a performance timer for keeping track of the length of time of a performance;
  - a positive audience response timer for keeping track of the length of time of a positive audience response of an audience comprised of one or more test subjects, to one or more portions of the performance;
  - a computer processor;
  - and a computer monitor;
  - wherein the computer processor displays a first numerical value for a running time of the performance timer and a second numerical value for a running time of the positive audience response timer on the computer monitor;
  - wherein the computer processor displays a first alphanumeric heading on the computer monitor which indicates what the first numerical value refers to; and
  - wherein the computer processor displays a second alphanumeric heading on the computer monitor which indicates what the second numerical value refers to.

The present application, in at least one embodiment, provides an apparatus 10 (present application, pg. 7, second to last paragraph, Fig. 1) which includes a performance timer (present application, pg. 7, second to last paragraph, timer 12, Fig. 1, and see fields 206a and 206b, Fig.

3) for keeping track of the length of time of a performance, a positive audience response timer (present application, pg. 7, second to last paragraph, timer 14, Fig. 1, and see fields 208a and 208b, Fig. 3) for keeping track of the length of time of a positive audience response of an audience comprised of one or more test subjects, to one or more portions of the performance. (Present application, pg. 8, last paragraph) The apparatus 10 may also include a computer processor 16, and a computer monitor 20. (Present application, pg. 7, second to last paragraph, Fig. 1). The computer processor 16 displays a first numerical value for a running time of the performance timer (present application, pg. 8, last paragraph, see fields 206a and 206b, Fig. 3) and a second numerical value for a running time of the positive audience response timer (present application, pg. 8, last paragraph, see fields 208a and 208b, Fig. 3) on the computer monitor 20. The computer processor 16 displays a first alphanumeric heading on the computer monitor 20 which indicates what the first numerical value refers to (present application, pg. 7, second to last paragraph, "Performance Timer" heading in field 206 in Fig. 3) and the computer processor 16 displays a second alphanumeric heading (present application, pg. 8, last paragraph, "PAR Timer" in field 208 in Fig. 3) on the computer monitor 20 which indicates what the second numerical value refers to. (Id.)

Claims 16-26 are dependent on claim 1 and also have further limitations.

Claim 16 further specifies that the computer processor determines an accumulated positive audience response time from one or more positive audience response times determined by the positive audience response timer; and determines a ratio of the accumulated positive audience response time versus a total performance time determined by the performance timer; wherein the computer processor displays the ratio on the computer monitor; and wherein the computer processor displays a third alphanumeric heading on the computer monitor which indicates what

the ratio refers to. In at least one embodiment of the present invention, computer processor 16 displays PAR Index in field 210a, where the PAR index is a ratio of accumulated positive response time versus the total performance time. (Present application, pg. 4, second to last paragraph, pg. 12, second to last paragraph).

Claim 17 further specifies that the ratio is displayed as a percentage and in at least one embodiment the PAR Index in field 210a may be a percentage. (Present application, pg. 12, second to last paragraph).

Claim 18 further specifies that the positive audience response is comprised of laughter of the one or more test subjects in the audience. Claim 19 specifies that the accumulated positive audience response time is comprised of an accumulated amount of time of laughter of the one or more test subjects.

Claims 20 and 21 further specify that the computer processor determines and displays on the computer monitor third and fourth numerical values, respectively, for accumulated amount of times of positive audience response of the one or more test subjects for first and second minutes, respectively, of the performance. In at least one embodiment the computer processor 16 determines and displays on computer monitor 20, positive audience response times per first and second minutes in fields 202a and 202b. (Present application, pg. 9, last sentence, Fig. 3).

Claim 22 further specifies that the computer processor determines and displays on the computer monitor a third numerical value for an average amount of time of positive audience response of the one or more test subjects per minute of the performance. In at least one embodiment the computer processor 16 determines and displays on computer monitor 20, an average amount of time of positive audience response, in field 210b. (Present application, pg. 12, last paragraph, pg. 5, second to last paragraph, Fig. 3)

Claims 23 and 24 further specify that the computer processor determines and displays on the computer monitor third and fourth numerical values for the total number of positive audience responses of the one or more test subjects in a first and second minute, respectively, of the performance. In at least one embodiment, the computer processor 16 determines and displays on computer monitor 20 total number of positive audience responses for first and second minutes of a presentation, in fields 204a and 204b, respectively. (Present application, pg. 10, first paragraph, pg. 5, last paragraph, Fig. 3).

Claim 25 further specifies that the computer processor determines and displays a third numerical value for the average number of positive audience responses of the one or more test subjects per minute of the performance as shown in one embodiment in field 210c. (Present application, pg. 13, first paragraph, pg. 6, first paragraph, Fig. 3).

Claim 26 specifies that the positive audience response is audible.

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The grounds of rejection to be reviewed on appeal are as follows:

- (A) Claims 1-4, 7-11, 15, 18, 20-22, and 26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo et. al., U.S. Patent Published Application No. 2004/0117815 A1 in view of Leroy, U.S. Patent No. 5,812,642.
- (B) Claims 5, 6, 12-14, 16-17, 19, and 23-25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kondo and Leroy and in view of Eldering, U.S. Patent No. 6,457,010 B1.

## **VII. ARGUMENT**



**I. Claims 1-4, 7-11, 15, 18, 20, 21, 22, and 26 should not have been rejected under 35**

**U.S.C. 103 based on Kondo in view of Leroy**

**A. Claims 1 (and 2-3, and 7-11) should not have been rejected under 35 U.S.C. 103  
based on Kondo in view of Leroy**

Claim 1 has been rejected under 35 U.S.C. 103 based on Kondo in view of Leroy.

Claim 1 specifies:

1. A method comprising  
    recording a first length of time of a first positive audience response of one or more  
test subjects to a presentation; and  
    displaying a first numerical value for the first length of time on a computer monitor;  
and  
    displaying a first alphanumeric heading on the computer monitor which indicates  
what the first numerical value refers to.

Kondo discloses an audience state estimation system which detects states such as "laughing", "clapping", "beating time with hands", or other movement. (Fig. 34). An indication of one of these audience states may be provided as an estimated result output. (Fig. 28). However, Kondo does not disclose displaying a first numerical value for a first length of time on a computer monitor for a first positive audience response. Kondo also does not disclose displaying a first alphanumeric heading on the computer monitor which indicates what the first numerical value refers to. (Id.)

In Kondo, there are various simplified graphs which explain how when a signal goes above a threshold, a particular audience state is estimated. (Kondo, pg. 7, paragraph 122-124; Figs. 25A-C) The time axis in these graphs is not labeled with numbers so there is no way of knowing from the graphs how long a particular audience state lasts. There is no indication that these simplified

graphs are displayed to end users, rather they are only used in the application to explain that when a particular signal exceeds a threshold, a particular audience state is detected.

There is no disclosure in Kondo that the length of time of an audience state should be saved or displayed. I.e. there is no disclosure that the length of time that the audience is "clapping" or "laughing" should be saved. Kondo is not concerned with determining how long an audience is doing something rather it is only concerned with detecting or estimating a current state, such as "beating time with hands", "clapping", "laughing", or "other movement". (Kondo, Fig. 34). Kondo uses "frame periods" to determine an audience state, but these frame periods are not lengths of time of a positive audience response but rather a predetermined fixed period of time, such as "...sequentially moving one-frame periods ..." (Kondo, pg. 6, paragraph 0113, 2<sup>nd</sup> to last line,)see also pg. 9, paragraph 160 "As in the characteristic amount detection unit 30, the movement amount and volume are detected based on the movement amount and volume within a fixed period using video signals for each frame and audio signals for each period corresponding to the one frame").

In the final office action, the examiner asserts that Kondo's characteristic amount detection unit 30, integration estimation unit 40, and variance calculation unit 323 track a total performance time and a positive audience response time. (Office Action, October 27, 2008, paragraph 7, last sentence). That is incorrect. Kondo, uses a predetermined "frame", "window" or "fixed" time period to detect an estimated state of "clapping", "laughing", etc. (Kondo, col. 6, paragraph 0106, col. 6, paragraph 0113). Kondo states:

As in the characteristic amount detection unit 30, the movement amount and volume are detected based on the movement amount and volume within a fixed period using video signals for each frame and audio signals for each period corresponding to the one frame" (Kondo, pg. 9, paragraph 160, third sentence, emphasis added)

Kondo does not keep track of the amount of time of a presentation or the amount of time of a positive audience response. Kondo refers to "22C2" and "22C1" of Fig. 25C as "states" and not as

"times" (Kondo, paragraph 0124) and there is no indication that a time is stored corresponding to states 22C1 and 22C2.

Kondo displays results of whether an audience is "clapping", "laughing" etc., but not how long a time period the particular state has lasted. The examiner states that Output Unit 50 of Kondo displays audience response data, such as that of Fig. 25C. (Office Action, October 27, 2008, paragraph 10). That is incorrect. There is no indication that Fig. 25C is output by Output Unit 50. Fig. 25C is a general graph which is used to explain the fact that when a signal exceeds a threshold a state of "laughing" or "clapping" is estimated. Output Unit 50 outputs the estimated states or results, such as "laughing" or "clapping". (Kondo, pg. 4, paragraph 0093, last line; paragraphs 0155-0157, see Fig. 34, Estimate States ST69, ST71, ST72, ST76, ST77, and then "END THE ESTIMATION PROCESSING"). There is no disclosure that Output Unit 50 outputs a graph, or any times.

Leroy displays information regarding phone calls taken or monetary pledges taken in concerning a particular television program during a pledge drive. (Leroy, Fig. 6(f), 7, 8). Just because someone calls or pledges money during a television program does not mean that they have a positive audience response to the program. They may be pledging money during their favorite part of the program or at the worst part of the program, or they may have channel 13 on all the time, and pledge or call whenever it is convenient. Leroy does not disclose recording a first length of time of a first positive audience response of one or more test subjects to a presentation.

It would not be obvious to combine Kondo and Leroy and doing so does not result in the combined limitations of claim 1 of the present application. Kondo was only concerned with estimating a state, such as "clapping" or "laughing". Kondo was not concerned with recording a length of time of a state. Leroy is not concerned with recording a length of time of a state either,

rather it is merely recording phone calls and monetary pledges received during a program. Neither Kondo or Leroy suggests “displaying a first numerical value for the first length of time on a computer monitor” wherein the first length of time is of a first positive audience response, because neither reference is concerned with recording a length of time of a first positive audience response.

Claim 1 is submitted to be allowable for at least the above reasons.

Claims 2-14 are dependent on claim 1 and are submitted to be allowable for at least the same reasons.

**B. Claim 4 should not have been rejected under 35 U.S.C. 103(a) based on Kondo in view of Leroy**

Claim 4 is dependent on claim 1 and is submitted to be allowable for at least that reason. In addition claim 4 specifies:

4. The method of claim 1 further comprising
  - recording a total length of time of the presentation;
  - displaying a second numerical value for the total length of time of the presentation on the computer monitor; and
  - displaying a second alphanumeric heading on the computer monitor, wherein the second alphanumeric heading indicates what the second numerical value refers to.

Kondo deals with giving an indication of a current audience state such as “laughing” or “clapping” and does not suggest recording or displaying a total length of time of a presentation. As previously discussed, Kondo uses fixed predetermined sequentially moving one frame time periods (Kondo, paragraph 0113, second to last sentence), and does not disclose keeping track of a total length of time of a presentation.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive. Although, Leroy provides graphs which track when telephone calls or monetary pledges are

received during a program (Leroy, Fig. 7 and Fig. 8), Leroy is not directed towards positive audience responses and it would not be obvious to combine Kondo and Leroy.

Claim 4 is submitted to be allowable for at least the above reasons and the previous reasons asserted with respect to claim 1.

**C. Claims 9 and 10 should not have been rejected under 35 U.S.C. 103(a) based on Kondo in view of Leroy**

Claims 9 and 10 are dependent on claim 1 and are submitted to be allowable for at least that reason. In addition, claims 9 and 10 further specify determining and displaying on the computer monitor second and third numerical values, for an accumulated amount of time of positive audience response of one or more test subjects for first and second minutes, respectively, of a presentation. In one embodiment, for example, there may be a positive audience response of twenty seconds for a first minute of a presentation, and a positive audience response of ten seconds for a second minute of a presentation.

As previously stated, Kondo determines a current state of an audience such as "clapping" or "laughing", but does not deal with amounts of time of positive audience response.

The examiner incorrectly refers to Kondo's detection frames or windows as a basis for rejecting claims 9 and 10. (Office Action, pg. 8, paragraph 16). Kondo's frames or windows are predetermined. They may be set larger or smaller depending on the period of what they are trying to detect, but they are predetermined. Kondo's window widths are set preferably to "several times the period detected". (Kondo, pg. 6, paragraph 0106, second to last sentence). I.e. if we are trying to detect "beating time with hands" of an audience, we are looking for a signal which has a period of about one-half of a second (Kondo, pg. 6, paragraph, 0106, last

sentence), and therefore we should set the window or frame width to several times the period we would expect for “beating time with hands”. This does not mean that the audience beats their hands or claps for one half of a second. The audience may be clapping for five minutes, but Kondo is only concerned with detecting the “clapping” not keeping track of how long the clapping goes on for.

Kondo does not disclose determining and displaying an accumulated amount of time of positive audience response for a first minute or for a second minute.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive and does not disclose determining and displaying positive audience response times for first and second minutes of a presentation.

Claims 9 and 10 are submitted to be allowable for at least the above respective reasons and the previous reasons asserted with respect to claim 1.

**D. Claim 11 should not have been rejected under 35 U.S.C. 103(a) based on Kondo in view of Leroy**

Claim 11 further specifies determining and displaying on the computer monitor a second numerical value for an average amount of time of positive audience response of one or more test subjects per minute of the presentation.

As previously stated, Kondo only determines a current state of an audience such as “clapping” or “laughing”, but does not deal with amounts of time of positive audience response.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive and does not disclose determining and displaying positive audience response times per minute of a presentation.

Claims 11 is submitted to be allowable for at least the above respective reasons and the previous reasons asserted with respect to claim 1.

**E. Claim 15 should not have been rejected under 35 U.S.C. 103(a) based on Kondo in view of Leroy**

Claim 15 of the present application specifies:

15. An apparatus comprising
- a performance timer for keeping track of the length of time of a performance;
  - a positive audience response timer for keeping track of the length of time of a positive audience response of an audience comprised of one or more test subjects, to one or more portions of the performance;
  - a computer processor;
  - and a computer monitor;
- wherein the computer processor displays a first numerical value for a running time of the performance timer and a second numerical value for a running time of the positive audience response timer on the computer monitor;
- wherein the computer processor displays a first alphanumeric heading on the computer monitor which indicates what the first numerical value refers to; and
- wherein the computer processor displays a second alphanumeric heading on the computer monitor which indicates what the second numerical value refers to.

Kondo discloses an audience state estimation system which estimates states such as "laughing", "clapping", "beating time with hands", or other movement. (Fig. 34). An indication of one of these audience states may be provided as an estimated result output. (Fig. 28). However, Kondo does not disclose a performance timer for keeping track of the length of time of a performance or a positive audience response timer for keeping track of the length of time of a positive audience response to one or more portions of a performance.

In Kondo, there are various simplified graphs which explain how when a signal goes above a threshold, a particular audience state is estimated. (Kondo, pg. 7, paragraph 122-124; Figs. 25A-C) The time axis in these graphs is not labeled with numbers so there is no way of knowing from

the graphs how long a particular audience state lasts. There is no indication that these simplified graphs are displayed to end users, rather they are only used in the application to explain that when a particular signal exceeds a threshold, a particular audience state is detected.

There is no disclosure in Kondo that the length of time of an audience state should be saved or displayed. I.e. there is no disclosure that the length of time that the audience is "clapping" or "laughing" should be saved. Kondo is not concerned with determining how long an audience is doing something rather it is only concerned with detecting or estimating a current state, such as "beating time with hands", "clapping", "laughing", or "other movement". (Kondo, Fig. 34). Kondo may use "frame periods" to determine an audience state, but these frame periods are not lengths of time of a positive audience response but rather an fixed period of time. (Kondo, pg. 6, paragraph 0113).

Kondo displays results of whether an audience is "clapping", "laughing" etc., but not how long a time period the particular state has lasted.

Leroy displays information regarding phone calls taken or monetary pledges taken in concerning a particular television program during a pledge drive. (Leroy, Fig. 6(f), 7, 8). Just because someone calls or pledges money during a television program does not mean that they have a positive audience response to the program. They may be pledging money at their favorite part of the program or at the part of the program they like the least, or they may have channel 13 on all the time, and pledge or call whenever it is convenient. Leroy does not disclose recording a first length of time of a first positive audience response of one or more test subjects to a presentation.

It would not be obvious to combine Kondo and Leroy and doing so does not result in the combined limitations of claim 15 of the present application. Kondo was only concerned with estimating a state, such as "clapping" or "laughing". Kondo was not concerned with recording a



length of time of a state. Leroy is not concerned with recording a length of time of a state either, rather it is merely recording phone calls and monetary pledges received during a program. Neither Kondo or Leroy suggests “displaying a first numerical value for the first length of time on a computer monitor” wherein the first length of time is of a first positive audience response, because neither reference is concerned with recording a length of time of a first positive audience response.

Claim 15 is submitted to be allowable for at least the above reasons.

Claims 16-26 are dependent on claim 15 and are submitted to be allowable for at least the same reasons.

**F. Claims 20 and 21 should not have been rejected under 35 U.S.C. 103(a) based on Kondo in view of Leroy**

Claims 20 and 21 further specify that the computer processor determines and displays on the computer monitor third and fourth numerical values, respectively, for accumulated amount of times of positive audience response of the one or more test subjects for a first and second minute, respectively, of the performance.

As previously stated, Kondo only determines a current state of an audience such as “clapping” or “laughing”, but does not deal with amounts of time of positive audience response.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive and does not disclose determining and displaying positive audience response times for first and second minutes of a presentation.

Claims 20 and 21 are submitted to be allowable for at least the above respective reasons and the previous reasons asserted with respect to claim 1.

**G. Claim 22 should not have been rejected under 35 U.S.C. 103(a) based on Kondo in view of Leroy**

Claim 22 further specifies that the computer processor determines and displays on the computer monitor a third numerical value for an average amount of time of positive audience response of the one or more test subjects per minute of the performance.

As previously stated, Kondo only determines a current state of an audience such as "clapping" or "laughing", but does not deal with amounts of time of positive audience response.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive and does not disclose determining and displaying positive audience response times for first and second minutes of a presentation.

Claims 20 and 21 are submitted to be allowable for at least the above respective reasons and the previous reasons asserted with respect to claim 1.

**II. Claims 5, 6, 12, 13, 14, 16, 17, 19, 23, and 24 should not have been rejected under 35 U.S.C. 103 based on Kondo in view of Leroy and in view of Eldering**

**A. Claims 5 and 6 should not have been rejected based on Kondo in view of Leroy and in view of Eldering**

Claim 5 of the present application specifies:

5. The method of claim 1 further comprising  
determining an accumulated amount of time of positive audience response of one or more test subjects to a presentation;  
determining a ratio of the accumulated amount of time of positive audience response divided by the length of total time of the presentation;  
and displaying the ratio on a computer monitor.

As previously stated, Kondo only determines a current state of an audience such as "clapping" or "laughing", but does not deal with amounts of time of positive audience response.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive and does not disclose determining and displaying positive audience response times or determining and displaying ratios of positive audience response time to a total time of a presentation.

The examiner concedes that the combination of Kondo and Leroy does not teach determining a ratio of the accumulated time of positive audience response divided by the length of total time of the presentation; and wherein the ratio is displayed as a percentage of total time of the presentation. (Office Action, October 27, 2008, pg. 14, second paragraph).

However, the examiner has incorrectly rejected claim 5 based on a combination of Kondo, Leroy and Eldering. Eldering discloses collecting information about a subscriber's television viewing habits and uses this information to target appropriate advertising to the subscriber. (Eldering, col. 4, Ins. 9-41). However, Eldering does not deal with amounts of time of positive audience response. Just because someone is watching something doesn't mean that they like what they are watching.

Claim 5 is submitted to be allowable for these reasons and all the reasons previously stated with respect to claim 1.

Claim 6 is dependent on claim 5 and further specifies that the ratio is displayed as a percentage of the total time of the presentation. Claim 6 is submitted to be allowable for at least the same reasons as claim 5 and for the reasons stated for claim 1.

**B. Claims 12-13 should not have been rejected based on Kondo in view of Leroy and in view of Eldering**

Claims 12 and 13 further specify determining and displaying on the computer monitor second and third numerical values, respectively, for the total number of positive audience responses of the one or more test subjects in a first and second minute, respectively, of the presentation.

As previously stated, Kondo only determines a current state of an audience such as "clapping" or "laughing", but does not deal with amounts of time of positive audience response.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive and does not disclose determining and displaying values for total number of positive audience responses in a first and second minute, respectively, of a presentation.

The examiner concedes that the combination of Kondo and Leroy does not teach determining total number of positive audience responses within the first minute and second minute, respectively. (Office Action, October 27, 2008, pg. 16, second paragraph). However, the incorrectly examiner rejects claims 12-13 based on a combination of Kondo, Leroy, and Eldering.

As discussed, Eldering discloses collecting information about a subscriber's television viewing habits and uses this information to target appropriate advertising to the subscriber. (Eldering, col. 4, Ins. 9-41). However, Eldering does not deal with amounts of time of positive audience response. Merely watching a program is not a positive audience response.

Claims 12-13 are submitted to be allowable for these reasons and all the reasons previously stated with respect to claim 1.

**C. Claim 14 should not have been rejected based on Kondo in view of Leroy and in view of Eldering**

Claim 14 further specifies determining and displaying on the computer monitor a second

numerical value for the average number of positive audience responses of the one or more test subjects per minute of the presentation.

As previously stated, Kondo only determines a current state of an audience such as "clapping" or "laughing", but does not deal with amounts of time of positive audience response.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive and does not disclose determining and displaying values for total number of positive audience responses in a first and second minute, respectively, of a presentation.

The examiner concedes that the combination of Kondo and Leroy does not teach determining the average number of positive audience responses of the one or more test subjects per minute of the presentation. (Office Action, October 27, 2008, pg. 18, first paragraph). However, the incorrectly examiner rejects claim 14 based on a combination of Kondo, Leroy, and Eldering.

As discussed, Eldering discloses collecting information about a subscriber's television viewing habits and uses this information to target appropriate advertising to the subscriber. (Eldering, col. 4, Ins. 9-41). However, Eldering does not deal with amounts of time of positive audience response.

Claim 14 is submitted to be allowable for these reasons and all the reasons previously stated with respect to claim 1.

**D. Claims 16, 17, and 19 should not have been rejected based on Kondo in view of Leroy and in view of Eldering**

Claim 16 further specifies that the computer processor determines an accumulated positive audience response time from one or more positive audience response times determined by the

positive audience response timer; and determines a ratio of the accumulated positive audience response time versus a total performance time determined by the performance timer; wherein the computer processor displays the ratio on the computer monitor; and wherein the computer processor displays a third alphanumeric heading on the computer monitor which indicates what the ratio refers to.

As previously stated, Kondo only determines a current state of an audience such as "clapping" or "laughing", but does not deal with amounts of time of positive audience response.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive and does not disclose determining and displaying positive audience response times or determining and displaying ratios of positive audience response time to a total time of a presentation.

The examiner concedes that the combination of Kondo and Leroy does not teach determining a ratio of the accumulated time of positive audience response divided by the length of total time of the presentation; and wherein the ratio is displayed as a percentage of total time of the presentation. (Office Action, October 27, 2008, pg. 14, second paragraph).

However, the examiner has incorrectly rejected claim 16 based on a combination of Kondo, Leroy and Eldering. Eldering discloses collecting information about a subscriber's television viewing habits and uses this information to target appropriate advertising to the subscriber. (Eldering, col. 4, Ins. 9-41). However, Eldering does not deal with amounts of time of positive audience response.

Claim 16 is submitted to be allowable for these reasons and all the reasons previously stated with respect to claim 15.

Claim 17 is dependent on claim 16 and further specifies that the ratio is displayed as a percentage of the total time of the presentation. Claim 17 is submitted to be allowable for at least

the same reasons as claim 16 and for the reasons stated for claim 15. Claim 19 is dependent on claim 15 and 16 and is submitted to be allowable for at least the same reasons.

**E. Claims 23 and 24 should not have been rejected based on Kondo in view of Leroy and in view of Eldering**

Claims 23 and 24 further specify that the computer processor determines and displays on the computer monitor third and fourth numerical values for the total number of positive audience responses of the one or more test subjects in a first and second minute, respectively, of the performance.

As previously stated, Kondo only determines a current state of an audience such as "clapping" or "laughing", but does not deal with amounts of time of positive audience response.

Leroy concerns keeping track of telephone calls and monetary pledges in a pledge drive and does not disclose determining and displaying values for total number of positive audience responses in a first and second minute, respectively, of a presentation.

The examiner concedes that the combination of Kondo and Leroy does not teach determining total number of positive audience responses within the first minute and second minute, respectively. (Office Action, October 27, 2008, pg. 16, second paragraph). However, the incorrectly examiner rejects claims 23-24 based on a combination of Kondo, Leroy, and Eldering.

As discussed, Eldering discloses collecting information about a subscriber's television viewing habits and uses this information to target appropriate advertising to the subscriber. (Eldering, col. 4, Ins. 9-41). However, Eldering does not deal with amounts of time of positive audience response.

Claims 23-24 are submitted to be allowable for these reasons and all the reasons previously stated with respect to claim 15.



## VIII. APPENDIX OF FINAL FORM OF CLAIMS INVOLVED IN APPEAL

1. A method comprising

recording a first length of time of a first positive audience response of one or more test subjects to a presentation; and

displaying a first numerical value for the first length of time on a computer monitor; and

displaying a first alphanumeric heading on the computer monitor which indicates what the first numerical value refers to.

2. The method of claim 1 wherein

the presentation is a performance.

3. The method of claim 1 wherein

first positive audience response is audible.

4. The method of claim 1 further comprising

recording a total length of time of the presentation;

displaying a second numerical value for the total length of time of the presentation on the computer monitor; and

displaying a second alphanumeric heading on the computer monitor, wherein the second alphanumeric heading indicates what the second numerical value refers to.

5. The method of claim 1 further comprising

determining an accumulated amount of time of positive audience response of one or more test subjects to a presentation;

determining a ratio of the accumulated amount of time of positive audience response divided by the length of total time of the presentation;

and displaying the ratio on a computer monitor.

6. The method of claim 5 wherein

the ratio is displayed as a percentage of the total time of the presentation.

7. The method of claim 1 wherein

the first positive audience response is comprised of laughter of the one or more test subjects.

8. The method of claim 1 wherein

the accumulated amount of time of positive audience response is comprised of an accumulated amount of time of laughter of the one or more test subjects.

9. The method of claim 1 further comprising

determining and displaying on the computer monitor a second numerical value for an accumulated amount of time of positive audience response of one or more test subjects for a first minute of the presentation.

10. The method of claim 9 further comprising

determining and displaying on the computer monitor a third numerical value for the accumulated amount of time of positive audience response of one or more test subjects for a second minute of a presentation.

11. The method of claim 1 further comprising

determining and displaying on the computer monitor a second numerical value for an average amount of time of positive audience response of one or more test subjects per minute of the presentation.

12. The method of claim 1 further comprising

determining and displaying on the computer monitor a second numerical value for the total number of positive audience responses of the one or more test subjects in a first minute of the presentation.

13. The method of claim 12 further comprising

determining and displaying on the computer monitor a third numerical value for the total number of positive audience responses of the one or more test subjects in a second minute of the presentation.

14. The method of claim 1 further comprising

determining and displaying on the computer monitor a second numerical value for the average number of positive audience responses of the one or more test subjects per minute of the presentation.

15. An apparatus comprising

a performance timer for keeping track of the length of time of a performance;

a positive audience response timer for keeping track of the length of time of a positive audience response of an audience comprised of one or more test subjects, to one or more portions of the performance;

a computer processor;

and a computer monitor;

wherein the computer processor displays a first numerical value for a running time of the performance timer and a second numerical value for a running time of the positive audience response timer on the computer monitor;

wherein the computer processor displays a first alphanumeric heading on the computer monitor which indicates what the first numerical value refers to; and

wherein the computer processor displays a second alphanumeric heading on the computer monitor which indicates what the second numerical value refers to.

16. The apparatus of claim 15 wherein

the computer processor determines an accumulated positive audience response time from one or more positive audience response times determined by the positive audience response timer;

the computer processor determines a ratio of the accumulated positive audience response time versus a total performance time determined by the performance timer;

and-wherein the computer processor displays the ratio on the computer monitor; and

wherein the computer processor displays a third alphanumeric heading on the computer

monitor which indicates what the ratio refers to.

17. The apparatus of claim 16 wherein

the ratio is displayed as a percentage.

18. The apparatus of claim 15 wherein

the positive audience response is comprised of laughter of the one or more test subjects in the audience.

19. The apparatus of claim 16 wherein

the accumulated positive audience response time is comprised of an accumulated amount of time of laughter of the one or more test subjects.

20. The apparatus of claim 15 wherein

the computer processor determines and displays on the computer monitor a third numerical value for an accumulated amount of time of positive audience response of the one or more test subjects for a first minute of the performance.

21. The apparatus of claim 20 wherein

the computer processor determines and displays on the computer monitor a fourth numerical value for the accumulated amount of time of positive audience response of one or more test subjects for a second minute of the performance.

22. The apparatus of claim 15 wherein

the computer processor determines and displays on the computer monitor a third numerical value for an average amount of time of positive audience response of the one or more test subjects per minute of the performance.

23. The apparatus of claim 15 wherein

the computer processor determines and displays on the computer monitor a third numerical value for the total number of positive audience responses of the one or more test subjects in a first minute of the performance.

24. The apparatus of claim 23 wherein

the computer processor determines and displays on the computer monitor a fourth numerical value for the total number of positive audience responses of the one or more test subjects in a second minute of the performance.

25. The apparatus of claim 15 wherein

the computer processor determines and displays a third numerical value for the average number of positive audience responses of the one or more test subjects per minute of the performance.

26. The apparatus of claim 15 wherein

the positive audience response is audible.

**IX. EVIDENCE APPENDIX**

No copies of any evidence are submitted with this brief.


**X. RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.

DATED:

2/10/09

Respectfully submitted,

  
Walter J. Tencza Jr.  
Reg. No. 35,708  
Suite 210  
100 Menlo Park  
Edison, N.J. 08837  
(732) 549-3007  
Fax (732) 549-8486